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Inside

Resiliency, resurgence in 2022 important issues on the horizon

Travis Black
CCTLA President

The closing months of this year give me an opportunity to reflect on the strong progress of the CCTLA on so many goals, even in the face of the 2021 challenges. I am proud to be part of the leadership team that has committed to education, advocacy and visibility for the trial lawyer community. In these times where many people use the word "justice," our members are actively working to provide it and making a difference in our communities.

Thank you to all our members who have been patient while the board navigated the COVID restrictions. I have written before about the strong attendance at our Zoom education programs and the great efforts of Education Chairs Dave Rosenthal and Peter Tieman in content development. For those who missed a program of interest to you, please reach out to Debbie Keller, our executive director. Copies of all presentations are available for $25. The Zoom format is working well for these sessions and is definitely one of the silver linings of the last year.

At our November board meeting, we heard from Samantha Farmer-Helton, CAOC deputy political director, on the topic of fee capping. This was pertinent because in October, the Koch Brothers, Big Tobacco and Big Oil Front filed three insidious initiatives attacking consumer rights. These initiatives are aimed at taking away Californians' ability to take on corporate wrongdoers and having a fighting chance against powerful interests that harm them by capping contingency fees and statutory attorney's fees at 20%—an unprecedented move. The Consumer Attorneys of California (CAOC) is doing a significant amount of outreach to organize a response to this initiative. As a result of what we learned at the board meeting, it is our plan to distribute information to the membership so everyone can be better prepared for the next steps.

More news from the CAOC front was the governor's signing of Senate Bill 447, which eliminates longstanding restrictions on "pain and suffering" damages—specifically addressing the eligibility of family members of deceased plaintiffs. The new law takes effect on Jan. 1, 2022.

CCTLA's monthly Q & A Luncheon, hosted by the always-excellent Dan Glass, is another example of the successful transition of an in-person event to a virtual format. This program is essentially a chance to consult with a group of your peers on any legal issue. Plug into this free expertise and Zoom in for great connection with your legal community.

Recently, I attended the Trial Lawyers University Conference held in Las Vegas. Attorneys from all over the United States were in attendance to learn from some of the pre-eminent attorneys in our field, including Brian Pannish, Keith Mitnick, Rex Parris ans Sean Claggett along with so many other notable names. The caliber of the speak-

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Mike's CITES

By: Michael Jansen
CCTLA Member

Please remember that some cases are summarized before the official reports are published and may be reconsidered or de-certified for publication. Be sure to check for official citations before using them as authority.

Looking for another pocket? Statutory duty could help

Blake McKenna vs. Lance Beesley
2021 DJDAR 8096 (August 6, 2021)

FACTS:

Plaintiff Blake McKenna crossing a busy street in a crosswalk on a green light for him when he was struck by a vehicle driven by Ann Rodgers, whose direction of travel had been dramatically altered by another vehicle that had run the red light, driven by Ronald Wells.

McKenna sued Wells and the owners of the vehicle Wells was driving, Lance Beesley and Smoothreads. Smoothreads was the corporate entity that owned the vehicle Wells was driving when he ran the red light. The sole shareholder and only human involved with Smoothreads was Beesley, who had hired Wells to do some handyman work at Beesley's home and loaned the vehicle to Wells. Plaintiff alleged negligent hiring and negligent entrustment of a motor vehicle.

Smoothreads and Beesley filed motions for summary judgment on the grounds they had no notice that Wells was an incompetent driver with many DUIs in his background and who had a suspended license. Wells drove a vehicle to Beesley's house, had a building contractor's license, and therefore Smoothreads and Beesley had no reason to suspect Wells' dark past.

In their motion for summary judgment, Smoothreads and Beesley stated that Vehicle Code Section 27150 provided $15,000 maximum, which they had paid, and there was no evidence to show negligence in hiring or negligent entrustment

Defendants claimed they did not have a duty to ask Wells about his licensure and driving past, and he did not volunteer that information. Plaintiff McKenna submitted Wells' deposition wherein Wells stated that no one asked him if he had a driver's license, whether he had a bad prior driving record or whether he had prior DUIs.

ISSUE:

Does an entruster of a vehicle have a duty to inquire of the driver regarding the driver's license status and/or past driving history?

HOLDING:

Yes. When a person allows another to drive his vehicle, the owner must inquire whether the driver has a license and whether the driver is capable of driving.

REASONS:

Negligent entrustment is a common law liability doctrine whose elements are enumerated at CACI No. 724. The courts look to the California Vehicle Code (CVC) Section 14604 when trying to determine the scope of the duty in a negligent entrustment situation. CVC §14604 includes: "…for the purposes of this section, an owner is required only to make a reasonable effort or inquiry to determine if the prospective driver possesses a valid driver's license before allowing him or her to operate the owner's vehicle…." This court thus concluded that Beesley had to make a reasonable effort or inquiry to determine whether Wells had a valid license. Thus, while there may not have been common law duty of negligent entrustment, there was a statutory duty in this case.

Defendants argued that even if Beesley did not inquire of Wells whether he had a license, that fact did not prove that Wells was incompetent to drive. The court countered that a jury could find that the owner's inquiry that resulted in a negative response would have been prima facie evidence that the driver was incompetent, and therefore the defendants' argument failed.

Defendants also argued that the fact Wells did not have a license did not cause injuries to Plaintiff. This court dodged that issue by stating that the sole question upon appeal was whether negligent entrustment or hiring had occurred and the California Vehicle Code violation was dispositive of that issue. Additionally, defendants stated that Wells was not acting within the course and scope of his employment, and therefore they could not be held li-

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Be Careful Not to Preclude Other Potential Claims When Signing a Release!

By: Justin Ward

Justin Ward, The Ward Firm, is CCTLA First Vice President

How many times after settling a case do we just forward the release to our client without looking at anything other than the dollar amount? Well, that is not in the best interest of your client and is possibly malpractice. Being a zealous advocate also includes zealously making sure your client recovers all money available to him or her as a result of the harm suffered.

Sometimes, there may also be a cause of action against another party, such as a third vehicle, against a property owner, or the government entity responsible for the roadway. By having your client sign a release without reviewing the terms in detail, you may just be signing away your client's right to recover additional damages against other parties.

Below is partial language from a standard AAA Insurance release:

> *To be executed by Jane Doe, hereinafter "the Releasor."*
>
> *The Releasor does hereby acknowledge receipt of payment in the amount of: twenty five thousand dollars and zero cents ($25,000.00) made payable to: The Ward Firm and Jane Doe, which payment is accepted in full compromise, settlement, and satisfaction of, and as sole consideration for the final release and discharge of all bodily injury or personal injury actions, claims, damages, demands, causes of action, or suits of every kind and nature whatsoever, at law or in equity, known or unknown, suspected or unsuspected, disclosed and undisclosed, that now exist, or may hereafter accrue against Joe Driver (hereinafter "the Releasee") and* ***any other person,*** *insurer, principals, agents, employees, assigns, representatives, subsidiaries, corporation, or other business entity responsible in any manner or degree for injuries to the person of the Releasor, and the treatment thereof, and the consequences flowing therefrom, as a result of the accident or incident which occurred…and for which the Releasor claims the Releasee and the above mentioned persons or entities are legally liable in damages which legal liability and damages are disputed and denied.*

Notice the boldened portion **"any other person."** That in essence means that if your client was struck by two vehicles or by a vehicle that was knocked into her by another vehicle, you are signing away your client's right to recover against the party not specifically named in the release. This really is absurd, since the release was not intended to benefit any other party besides your client and the specific driver.

There are multiple California appellate courts which have dealt with this issue, and there are some, such as *Neverkovec v. Fredericks* (1999) 74 Cal.App.4th 337, which held that, "to obtain summary judgment on the ground that a general release has discharged him from liability, a third party to the release agreement must affirmatively show that the parties intended to release him. The burden of proof is on the third party, under both contract law and the summary judgment statute. (§ 437c, subd. (o).) *Because the court must consider the circumstances of the contracting parties' negotiations to determine whether a third party not named in the release was an intended beneficiary, it will seldom be sufficient for the third party simply to rely on a literal application of the terms of the release.* 'The fact that ... the contract, if carried out to its terms, would inure to the third party's benefit[,] is insufficient to entitle him or her to demand enforcement.' "(*Id*. at p. 349 (citation omitted & emphasis added).)

Since Fredericks was arguing for a literal interpretation of the release and offering little evidence of the contracting parties' intent, a declaration by Larry Neverkovec's mother stating that she never intended to release a possible future claim against Fredericks was sufficient to create a triable issue of fact and compel

reversal of summary judgment. (*Id*. at pp. 349, 353-354.)

Other California appellate courts, however, have agreed that the language "any other person" covers other drivers involved in the collision, despite the fact that they have their own insurance. *Rodriguez v. Oto* (2013) 212 Cal.App.4th 1020 and *Cline v. Holmuth*, (2015) 235 Cal.App.4th 699, have taken different approaches regarding such releases.

In *Rodriguez*, plaintiff Rodriguez and defendant Oto were involved in a collision while Oto was driving a rental car to an event for his employer, Toshiba.(*Rodriguez v. Oto, supra*, 212 Cal.App.4th at p. 1023.) Rodriguez settled with the rental car company, The Hertz Corporation, executing a release that released Oto, Hertz and **"all other persons, firms, corporations, associations or partnerships."** (*Id*. at p. 1024.)

Later, Rodriguez sued Oto and Toshiba. The trial court granted summary judgment, ruling that the release exonerated both Oto and Toshiba from liability. (*Id*. at p. 1025.)

The appellate court in *Rodriguez* affirmed the dismissal in a decision that criticized *Neverkovec*. Rodriguez argued that Toshiba should bear the burden of demonstrating that the contracting parties had "actual intent" to benefit Toshiba. (*Id*. at p. 1027.)

The court of appeal deemed this approach as inconsistent with contract law. (*Ibid*.) The *Rodriguez* court reasoned that, in determining the meaning of the contract, the courts look first to the language of the contract when determining the parties' intent. (*Id*. at pp. 1027-1028.) Where a contract's language is unambiguous, a third-party beneficiary seeking to enforce its rights makes a prima facie showing of entitlement to benefit from the contract "merely by proving the contract." (*Id*. at p. 1028.)

The *Rodriguez* court criticized the statement in *Neverkovec* that a third party not expressly named in the contract will " 'seldom' be able 'simply to rely on a literal application of the terms of the release.' " (*Rodriguez v. Oto, supra*, 212 Cal.App.4th at p. 1030, quoting *Neverkovec v. Fredericks, supra*, 74 Cal.App.4th at p. 349.) The *Rodriguez* court stated that it had "grave reservations" about whether *Neverkovec* had correctly stated the law on this point:

By having your client sign a release without reviewing the terms in detail, you may just be signing away your client's right to recover additional damages against other parties.

> *The gravamen of the passage appears to be that even where the contract plainly expresses an intent to grant rights to the party claiming them, he can only establish those rights by presenting extrinsic evidence sufficient to show that the parties really meant what they said. Such an approach flies in the face of "the generally applicable law of contracts" (Neverkovec, supra, 74 Cal.App.4th at p. 348) — which, as we have said, determines the parties' intent in the first instance from what they said and moves on to other evidence only if some recognized ground is shown to do so, such as ambiguity, fraud, mistake or unconscionability. (Rodriguez v. Oto, supra, 212 Cal.App.4th at p. 1030.)*

For this reason, the court rejected the holding from *Neverkovec* that the rights of a third party not named in the release "cannot be determined without 'consideri[ing] the circumstances of the contracting parties' negotiations' " (*Id*. at p. 1030, quoting *Neverkovec v. Fredericks, supra*, 74 Cal.App.4th at p. 349)

The *Rodriguez* court then distinguished *Neverkovec* on the ground that the release in that case had been found to be ambiguous on its face, opening the door to consideration of extrinsic evidence of the contracting parties' intent. (*Rodriguez v. Oto, supra*, 212 Cal.App.4th at p. 1033.

In the absence of such ambiguity, the court held, there is no requirement that the third party show an intent to benefit it from the circumstances because "[t]he agreement itself is such proof." (*Id*. at p. 1031.)

In any event, the *Rodriguez* court continued, neither the mere deposition testimony of Rodriguez that it was not the intent of himself, Hertz or Oto to shield Toshiba from liability which the appellate court characterized as "subjective" and "vague at best," nor the omission of Toshiba from the release was sufficient to raise a triable issue of fact regarding the mutual intent of the parties. (*Id*. at p. 1034-1035.)

Cline v. Holmuth, supra, 235 Cal.App.4th 699, is a case that addressed both *Neverkovec* and *Rodriguez*. In *Cline*, the plaintiff was injured in an automobile collision with a teenager. The plaintiff signed a general release that released the teenager and his parents "and any

other person, corporation, association, or partnership" responsible for the accident. (*Id*. at p. 70I.) The plaintiff then sued the teen's grandmother, who was present in the car. After a bench trial, the trial court ruled that the release was unambiguous and that the grandmother was entitled to enforce it. (*Id*. at p. 702.)

In its *Cline* decision, the Third Appellate District reviewed the prior cases regarding third-party beneficiaries of general releases and concluded that "the law permits a plaintiff who opposes enforcement of a general release by a third party to offer evidence as to the circumstances surrounding negotiation and signing of the release" in order to attempt to show the parties' intent. (*Id*. At p. 710) The court framed the issue as a question of whether, after the grandmother had shown she was an intended beneficiary, the plaintiff had presented competent evidence to show that the parties did not intend to benefit the grandmother when they entered into the release. (*Ibid*.)

In *Cline*, the grandmother presented deposition testimony from the insurance adjuster who drafted the release. The adjuster explained he had not named her in the release because she was not a named insured under the policy. (*Id*. at p. 710.) The adjuster stated he understood the release to cover "the world" and that there had been no discussion about it. (*Ibid*.) The plaintiff argued that the failure to include her showed intent to exclude her from the settlement's terms, but the court of appeal rejected this argument. (*Id*. at p. 712.)

The plaintiff argued the disparity between the $100,000 settlement amount and his claimed damages, over $1 million, suggested the release was not intended to cover the grandmother. The court rejected this argument, noting that, unlike the situation in *Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, the settlement was not insignificant. (*Id*. at p. 712.)

Plaintiff's remaining evidence was his testimony and his attorney's testimony that they did not understand the release to cover grandmother and that "Cline would not have signed the release had he understood it to release her." (*Ibid*.) However, this undisclosed subjective evidence of Cline's intent was insufficient to prove that the parties intended to exclude the grandmother from the release. (*Ibid*.) The *Cline* court also distinguished *Neverkovec* because it involved a release with an ambiguity, which created a triable issue of material fact on summary judgment. (*Id*. at p. 713.)

Based on the current law above, it is possible to overcome the presumption that "any other person" did not include certain people, but it is very difficult. I would not recommend allowing it to get to that point. Make sure you read your client's release carefully. If it includes such language, request from the defense attorney or insurance adjuster that the language be stricken. You can send them paragraphs from the cases cited in this article if necessary.

In cases where there is no other driver possibly responsible for your client's injuries, then it may not matter if the release includes the catch-all language. However, sometimes you may not be aware of other responsible parties, and failing to exclude the catch-all language could cost your clients a lot of money and lead to a claim against your malpractice insurance.

Rather than risk having a case dismissed by a demurrer or motion for summary judgment and the subsequent fallout, it is best practice to NEVER allow such catch-all language in your client's releases.

Mike's Cites

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able. This court also dodged that question on the grounds that they did not make the MSJ on those grounds.

Editor's Note: This case has 48 footnotes, an unusually high number that helps bring to light some background information.

Howell & Pebley explored: A plaintiff's counsel's "Must Read" case

Malak Melvin Abdul Qaadir
vs. Ubaldo Gurrola Figueroa
2021 DJDAR 8288 (August 11, 2021)

FACTS:

Plaintiff Qaadir was a truck driver on the job when he was rear-ended by another truck which caused him serious personal injuries. Qaadir did not seek medical care immediately, but the next day, he went to Kaiser. Unhappy with his Kaiser medical care, Qaadir sought a personal-injury attorney who referred him to a pain management specialist, who in turn provided referrals to chiropractic and physical therapy treatments and more intrusive medical care.

Qaadir eventually underwent epidural and facet block injections on a lien, which were not successful. He ultimately underwent spinal fusion surgery, also on a lien. Qaadir also ended up with a spinal cord stimulator surgically implanted in his lumbar spine.

Qaadir filed suit, and the defendant admitted liability. The case went to trial on damages. Plaintiff presented evidence of full medical bills, both paid and unpaid. The total amount of his medical care was $838,320.02, slightly more than $5,000 was Kaiser. However, Plaintiff's billing expert testified the reasonable value of his medical bills totaled $632,456. The defendant's billing expert opined the reasonable value of Qaadir's care was $174,111based on Medicare, Medi-Cal and Workers' Comp schedules.

The jury returned a damages verdict $3,464,288. Past lost earnings were determined by the jury to be $282,288; past medical expenses were determined by the jury to be $532,000; future lost earnings $900,000; future medical expenses $500,000; past non-economic losses $500,000; and future non-economic loss $750,000.

Defendant appealed on the grounds that the full billed amount of the medical special damages should not have been provided to the jury. Moreover, the defense appealed the case on the grounds that the unpaid medical bills were used by the plaintiff to claim future damages. Lastly, Defendant appealed because the trial court excluded evidence that Qaadir's attorney referred him to the pain physicians. Defendant wanted to introduce evidence that Plaintiff's counsel sent Plaintiff to the lien-physicians and failed to mitigate damages because Qaadir had health insurance and access to Worker's Comp medical care.

ISSUES:

(1) Is plaintiff allowed to present to the jury the full amount of medical bills?
(2) When a plaintiff has medical insurance, can a lien amount be presented to the jury?
(3) Can unpaid medical bills be used to prove future damages?
(4) Is fact of referral by plaintiff's attorney to medical provider on a lien admissible?

HOLDING:

(1) YES; (2) YES; (3) Not here; (4) YES

REASONS:

This opinion discusses important cases that every plaintiff's personal injury attorney should be familiar with: *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541; *Bermudez v. Ciolek* (2015) 237 Cal.App.4th 1311; *Pebley v. Santa Clara Organics*, LLC (2018) 22 Cal. App.5th 1266, *Ochoa v. Dorado* (2014) 228 Cal.App.4th 120, and *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1319.

Issue #1: Under *Howell, supra*: "an award of past medical expenses is limited to the lesser of (1) the amount paid or incurred and (2) the reasonable value of the services rendered." If the full amount billed fulfills these requirements, particularly the "paid or incurred" prong, that information is admissible. [**Practice Pointer:** Make sure plaintiff testifies that she *incurred* the medical bill and *will suffer economic loss* in the amount of the medical bills.]

Issue #2: This trial court found *Pebley* controlling, and the appellate court stated "We agree with *Pebley* that an insured plaintiff who opts to receive medical treatment from outside of his insurance plan should be considered uninsured for purposes of proving past and future medical damages. This is because the plaintiff, rather than the health insurer, is the entity who is obligated to pay."

Issue #3: Contrary to Defendant's contentions, the unpaid medical bills were not used to support Plaintiff's claim for future damages.

Issue #4: This appellate court agreed with the defense that the evidence that Plaintiff was referred to the lien-physician by his attorney was relevant to the question of the reasonable value of the medical care because it showed bias and financial incentives on the part of the physicians. If a lien-physician wants future referrals from a lawyer and understands that the lawyer benefits from inflating a client's medical bills, that incentive might encourage the lien-physician to inflate its current bill to please the lawyer and win future referrals. (Evidence Code Section 210, 350.)

During trial, Plaintiff filed a *motion in limine,* citing to *Pebley* to exclude the evidence of his insurance status. The trial court agreed that under *Pebley*, "you cannot use private insurance for mitigation of damages." In other words, the fact that the plaintiff had health insurance and/or Worker's Compensation insurance coverage is not admissible to argue that he failed to mitigate his damages by getting treatment on a lien. But such evidence **is admissible** for purposes of impeaching the medical provider's testimony of reasonableness of the bills.

PRESIDENT

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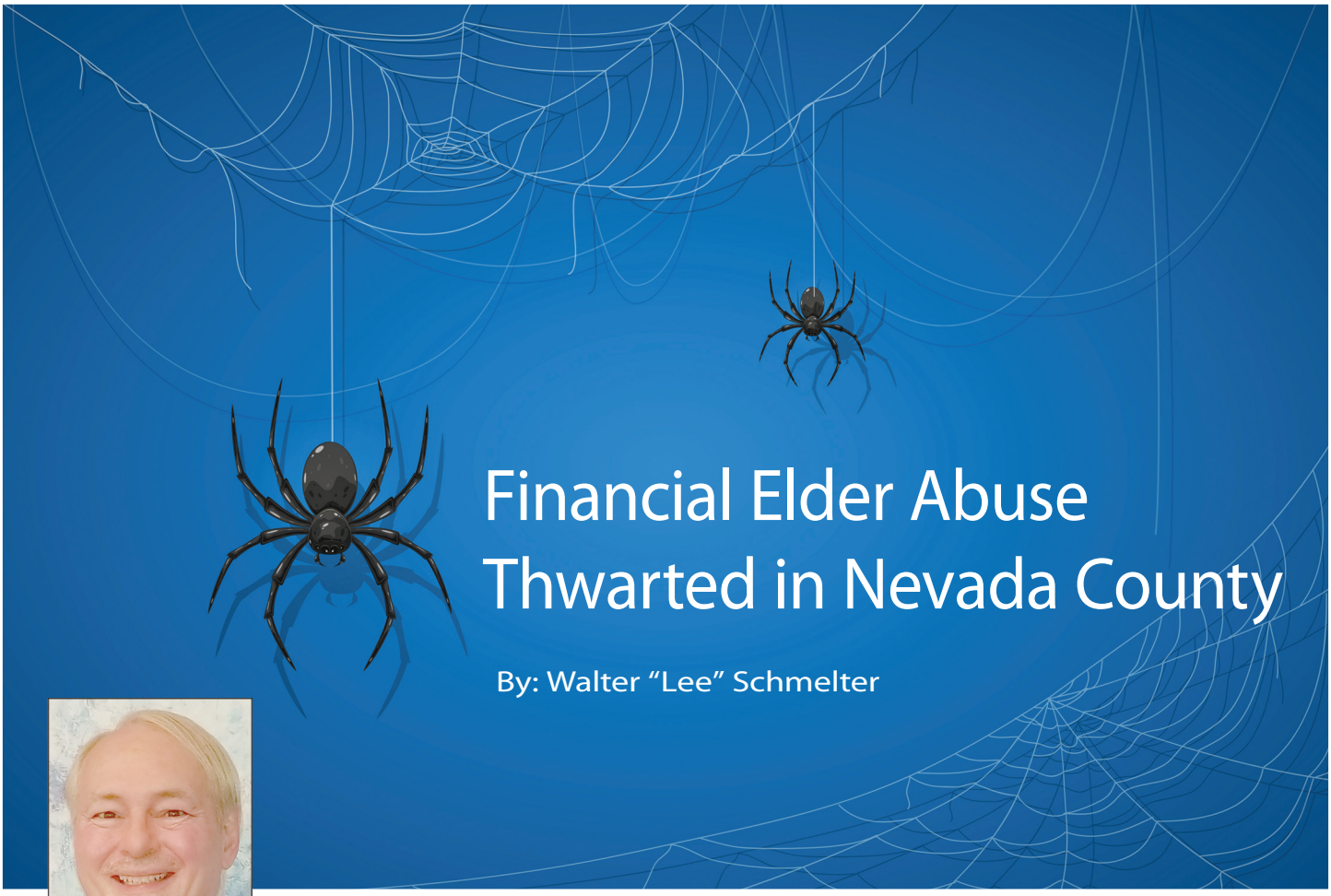
ers, the opportunity to learn current trends in courtrooms and trial prep in a post-pandemic world was invaluable. The conference organizer, Dan Ambrose, has promised a wonderful program for 2022. Check out all the details at TriaLawyersUniversity.com.

It has been an honor to serve as your president through this very interesting year. I appreciate the board members who have been generous with their time and service to our organization. Most importantly, we have Debbie Frayne Keller, our executive director, who makes all the magic happen and keeps CCTLA as the premiere organization for trial lawyers. Everyone contributed to the success of this year. Together, we demonstrated resiliency and positioned this organization to take leaps forward in 2022.



Financial Elder Abuse Thwarted in Nevada County

By: Walter "Lee" Schmelter

Walter Schmelter, Law Office of Walter Schmelter, is a CCTLA Board Member

Through tenacity and hard work, I was to free an elderly couple from an abusive defendant's clutches. A financial elder abuser had wrangled his way via a FaceBook post to temporarily place himself and his trailer onto my husband-and-wife clients' 18-acre retirement dream-home property outside Nevada City, CA.

Defendant's first three months on the property, on an oral agreement, went well. Defendant was pleasant and helpful with carpentry tasks. Then Defendant drafted and obtained from my elderly clients a five-year no-rent, free-utilities lease in exchange for agreeing to build for sale "tiny houses" suitable for putting on a trailer—then to split net profits with my clients. Defendant inserted an exculpatory clause into the lease, stating that should economic conditions change, he was under no duty to produce any trailers. After 18 months (mostly pre-Covid), Defendant made zero progress or preparations.

The lease was abusive pursuant to Welf. & Inst. C. § 15610.30 because Defendant knew or should have known that this conduct is likely to be harmful to the elder. Almost immediately after signing, Defendant became intrusive, inquiring about my clients' will and estate, suggesting the husband was mentally incompetent and encouraging his wife to leave him. He demanded $20,000 to "buy him out of his lease," and he became physically abusive, shoving the husband from behind while fixing an electrical box. The sheriff was called but declined to act without independent witnesses since the husband had suffered previous recent blackout collapses due to a health condition. Defendant called the county about recent non-permitted improvements to clients' property.

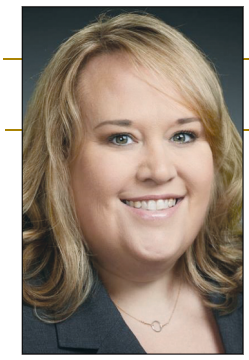
An unlawful detainer eviction was not a good option due to federal, state and county eviction bans—and Defendant had ostensible property rights under his abusive five-year lease. Several complicating practical procedural hurdles remained: Nevada County courts were open on a very limited basis, civil trials were stalled, and filing for elder-abuse restraining orders required an early morning delivery to the clerk and waiting for an afternoon acceptance after review.

Anticipating suit, Defendant filed for his own civil harassment order, pursuant to CCP §527.6. The court heard both ex parte matters concurrently for the initial hearing. Absent settlement, the procedure is then to set for a full evidentiary hearing within 20 days, but the court advised that Covid, the limited number of court employees and a full calendar would be good cause to continue the matter much longer.

The objective was to end the five-year lease without a civil suit, which would certainly take a long time and more client money. Defendant had no money and thus no fear of a civil judgment, and he knew how to use the courts. In court and at my urging and with a nudge from the judge to detailed mutual restraining orders, both parties agreed to a 90-day move-out period, and most importantly, to immediately void the five-year lease, ending Defendant's de facto legal claim to possession. My letter to Defendant to obey the court order was effective: 90 days later, Defendant left without incident.

Mining for GOLD

Being Prepared to Impeach the Defense Expert Witness



Marti Taylor, of Wilcoxen Callham, LLP, is a CCTLA Board Member

By: Marti Taylor

Let's face it, defense experts are generally well paid, experienced and polished. They are used to facing plaintiffs' attorneys and have become adept at dodging everything you throw at them. So what should you do when encountering one of these defense experts? Be prepared to impeach their credibility.

Who among us has faced the defense expert witness who is disagreeable in every sense of the word? They have contrary opinions, contrary attitudes and one goal in mind, disproving your case. You could ask them to agree that the sky is blue and they would say a thousand words without agreeing. These individuals (medical experts, biomechanical experts, economists, etc…) have been hired by the defense with one sole objective: To poke holes in your client's case at every turn.

These individuals have a convenient opinion for any medical condition your client has, they will testify it can't possibly be related to the accident. Or they have a biomechanical opinion that your client can't possibly have been injured in the collision. Or that your client's damages can't possibly be as high as claimed.

The likelihood that these experts will ever agree with you is slim. Let's face it, defense experts are generally well paid, experienced and polished. They are used to facing plaintiffs' attorneys and have become adept at dodging everything you throw at them. So what should you do when encountering one of these defense experts? Be prepared to impeach their credibility.

Preparation is the key to success. Prior to the deposition of the defense expert and more importantly, arbitration or trial, put in the work to scour their publications, online materials and even their social media. The odds are that with enough searching you will be able to unearth a gem that you can use to call their credibility into question.

California Evidence Code Section 780 states:

"Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove

the truthfulness of his testimony at the hearing, including but not limited to any of the following:
(a) His demeanor when testifying and the manner in which he testifies.
(b) The character of his testimony.
(c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.
(d) The extent of his opportunity to perceive, to recollect, or to communicate any matter about which he testifies.
(e) His character for honesty or veracity or their opposites.
(f) The existence or nonexistence of a bias, interest, or other motive.
(g) A statement previously made by him that is consistent with his testimony at the hearing.
(h) A statement made by him that is inconsistent with any part of his testimony at the hearing.
(i) The existence or nonexistence of any fact testified to by him.
(j) His attitude toward the action in which he testifies or toward the giving of testimony.
(k) His admission of untruthfulness."

The word "impeach" means to cast doubt upon or to attack the validity of testimony. Specifically, to challenge the credibility of (a witness) or the validity of (a witness's testimony). A witness may be impeached by character evidence or circumstantial evidence relating to the credibility of the witness, and especially on prior inconsistent statements, contradiction by other evidence, and the witness's reputation for truth, prior acts of misconduct, and partiality. (See Merriam-Webster.com. 2011. https://www.merriam-webster.com (8 May 2011.))

California Evidence Code Section 721 states:

"(a) Subject to subdivision (b), a witness testifying as an expert may be cross-examined to the same extent as any other witness and, in addition, may be fully cross-examined as to (1) his or her qualifications, (2) the subject to which his or her expert testimony relates, and (3) the matter upon which his or her opinion is based and the reasons for his or her opinion.
(b) If a witness testifying as an expert testifies in the form of an opinion, he or she may not be cross-examined in regard to the content or tenor of any scientific, technical, or professional text, treatise, journal, or similar publication unless any of the following occurs:
(1) The witness referred to, considered, or relied upon such publication in arriving at or forming his or her opinion.
(2) The publication has been admitted in evidence.
(3) The publication has been established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice."

Impeachment of expert witnesses is especially important since their entire job is to disagree with the claims of your case. However, expert testimony does have vulnerability. A defense expert's testimony can be called into question if the expert contradicts themselves or if they are confronted with their own materials that conflict with their opinions. Credibility is paramount for experts—in order for their opinions to be believed by the trier of fact, they must be perceived as being truthful.

Contradiction is one of the most effective ways to impeach the defense expert witness. If you can show through cross-examination that the expert has testified to a falsity then their entire testimony is called into question. Likewise, if you can prove that the basis for the expert's opinion is false or nonexistent, then trust in the expert's opinion is broken. This falsity will permeate his entire testimony in the eyes of the jury, and they will view them as an untruthful witness.

Medical literature can also be used by a skilled attorney to impeach an opposing expert witness's testimony. Relevant medical treatises or articles can be used by an attorney to impeach an expert witness during cross-examination if they can be proven authoritative. If used effectively, contradictory medical literature can cast significant doubt upon an opposing expert's testimony during cross-examination.

The key is to set yourself up for success and arm yourself with the tools to effectively impeach the defense experts. That means taking the time to search through, not only their prior deposition and trial testimony, but publications they have authored, footage or audio of any presentations they have given and even their social media.

In this era of the Internet, there are

The key is to set yourself up for success and arm yourself with the tools to effectively impeach the defense experts. That means taking the time to search through, not only their prior deposition and trial testimony, but publications they have authored, footage or audio of any presentations they have given and even their social media.

very few experts who have zero online presence. Most experts have a website that can be mined for valuable information. Many have published materials in their subject area. And some have spoken at seminars, made presentations and even posted videos on You Tube.

When you are served with an expert disclosure by the other side, one of the first things you should do is an investigation of the expert. Even a cursory Google search will usually turn up a good deal of information—some of which can be used against the expert on cross-examination

I recently encountered a defense expert in an arbitration. The expert was a well credentialed and polished expert with testimony that was quite critical of my case. I knew the expert was not going to concede much on cross-examination. In anticipation of his testimony, I researched the expert extensively. This included an in-depth Internet research, social media search and a conversation with my expert about the opposing expert.

After putting the time in, I found a medical treatise that the expert had published and edited, as well as You Tube footage of the expert. Both items contained statements from the expert that were contrary to opinions he was rendering in my case. On cross-examination, I first asked him to agree with the general content of the statements that I had obtained from his materials, and when he wouldn't agree, I was able to impeach him with his own publications and statements. This was quite effective in painting him as un untruthful witness whose opinions were questionable.

Although extensive research of the defense experts is time consuming and tedious, it will likely yield gems that you can utilize to discredit their opinions. This will give you an edge in cross-examination and set you up for success.

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Linda J. Conrad is an Appellate Specialist, certified by The State Bar of California Board of Legal Specialization, handling civil and family appeals and writs for appellants and respondents in the First, Third, and Fifth District Courts of Appeal and the California Supreme Court. Certified Appellate Law Specialists have demonstrated their commitment to maintaining their proficiency in handling all matters relating to an appeal, including:

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- *Evaluation of the issues and merits of the appeal*
- *Analyzing the facts and law in light of the applicable standards of review and prejudice*
- *Writing effective briefs and petitions*
- *Assessing the merits of a petition for review*

A Weak Man's Imitation of Strength

Ryan Sawyer, Law Office of Ryan K. Sawyer, is a CCTLA Board Member

By: Ryan K. Sawyer

People want to feel strong. No one likes feeling pushed around, walked on, belittled, or bullied. I suspect many of us had a parent or caring adult in our lives who early on provided us with the important direction to stand up for ourselves and others. Maybe we were taught at that time the importance of not backing down from a physical fight, how to stop someone from taking something from someone else, or the important ability to say, "No." Many of us have selected our profession based upon this sense of duty and desire to help when others have been harmed or bullied in some way.

There is inherent conflict in the act of standing up to others because we are essentially disagreeing with their intentions or wants. This conflict is relished by some attorneys who wake up every morning just looking for someone new to clash with.

Other attorneys accept this conflict with an understanding that it is a necessary part of their role in helping others. Others dread it. Knowing this inherent conflict is unavoidable, the question is how we handle it—with civility or not.

I presume many of us have had the experience of telling someone we are an attorney, and their response is something along the lines of, "People always tell me that I should have been a lawyer because I am really good at arguing!" Sometimes they are referring to their ability to intellectually grasp concepts and effectively advocate for one position or another. Yet I am convinced on other occasions they are simply referring to their ability to be what they *think* attorneys are supposed to be—constantly aggressive in speech, gruff and discourteous. We know there are some attorneys who fit this description, but hopefully, the one we see in the mirror does not.

It is an easy trap for some of us to fall into. We all deal with conflict differently based upon our personality, upbringing, influences, past experiences and what we have found works for us. We may even think we have been successful using an uncivil approach in our communications with others, whether in our law practice, at home, or elsewhere. Although we may find it somehow satisfying or believe it to be effective, is has been wisely said that, "Rudeness is the weak man's imitation of strength."

Civility is Our Duty

The oath to be taken by every person on admission to practice law is to conclude with the following: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity." (Cal. Rules of Court, rule 9.7, emphasis added)

The State Bar provides a civility toolbox with links to various documents encouraging greater civility in our profession.[1] This appears to be a major point of emphasis in counties throughout California and across the country as well.

Civility is Effective

A recent Civility Matters program, led in part by CCTLA members John Demas and Michelle Jenni, provided some entertaining examples of attorneys, and sometimes their clients, who allowed their emotions to get the best of them. Not the least of which was a video deposition where counsel provided us with the memorable quotation, "Fred, and I say this with all due respect, you are one of the most ignorant people I have met in a long time . . . you are being an idiot and a jerk."[2]

I could not help but wonder after watching some of these humorous video clips how the case proceeded thereafter, and how much additional time and money was likely wasted by both sides after these lines of civility had been crossed.

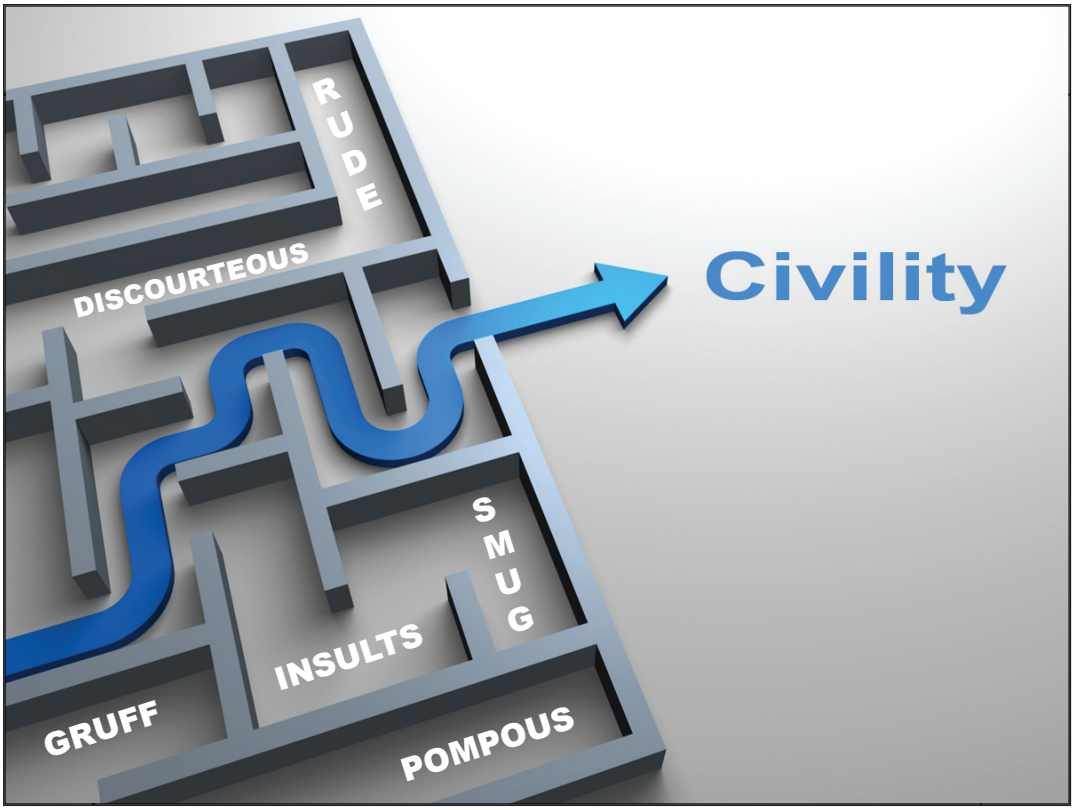
Think of the most successful attorneys you know for a moment. Are they rude? Do they throw personal insults at opposing counsel? Do they pompously threaten with a raised voice?

In my experience, the most successful attorneys do not engage in such behavior. They know the law and are confident in their abilities. So confident in fact that they do not spend time huffing, puffing and stomping their feet when a claims representative seems to be missing the point, or when opposing counsel disagrees with them.

At the time of trial, juries naturally assess the credibility of each lawyer in addition to weighing the actual evidence. They are human and unsurprisingly turned off by attorneys who are arrogant, smug, rude or discourteous.

Perhaps there are a remarkable few

In my experience, the most successful attorneys ... know the law and are confident in their abilities. So confident, in fact, that they do not spend time huffing, puffing and stomping their feet when a claims representative seems to be missing the point, or when opposing counsel disagrees with them.



who can flip a switch from being insulting and rude the day before trial to pleasant and civil in the courtroom, but most of the time a jury will sense their inauthenticity and that does not bode well for them nor their client. Civility needs to be part of who we are.

Tips to Avoid Slipping Into Incivility

In a March 2016 article titled, "Nice Guys Don't Have to Finish Last," Scott B. Garner notes that too many lawyers confuse zealous advocacy with incivility.[3] He reminds us that civility does not suggest weakness or a lack of zealous representation, and that incivility is damaging to our profession, our clients, and our reputations. Noting that most of us are not inherently uncivil, Mr. Garner provides the following tips to help us avoid slipping into incivility:

First, we must accept the premise that civility is good and incivility is bad. Whether your goal is to (a) obtain a good result for your client, (b) provide efficient legal services, (c) preserve your reputation in your local bar, (d) enjoy the practice of law, (e) treat the legal profession with respect; or (f) all of the above, you must recognize that acting civilly is both necessary and worthwhile.

Second, follow the Golden Rule—that is, to treat others as you would have them treat you. If you would want and expect opposing counsel to grant you an extension so you can take a family vacation, then grant opposing counsel that same courtesy.

Third, become involved in local bar associations and bar-related activities. As we become better acquainted with other members of our profession, we realize our professional reputation does matter—not only in terms of how good and smart we are, but in how we treat other lawyers. Sitting on a board or bar committee with an opposing counsel will make you think twice before sending that heated and largely unnecessary email.

Fourth, avoid personal attacks and vitriol. You can tell opposing counsel you disagree with his position without attacking him personally. You can even state your client's opposing position forcefully and persuasively, without using words such as "ridiculous" or "ludicrous" and without threatening sanctions.

Fifth, treat every email as if it were a formal letter . . . the informality of emails often causes lawyers to hit the "send" button before the communication has been properly vetted. Do not fall into that trap. Thoughtfully review and consider all professional email communications before sending them.

Sixth, and related to the preceding paragraph, do not send emails when you are angry. Sometimes, after reading a brief or correspondence from opposing counsel, there is a desire and tendency to respond with a harsh retort. Feel free to write that vitriolic email response if it makes you feel better, but then take a breath, delete the draft and start again.

Seventh, assume all correspondence with opposing counsel will end up in front of a judge, and will be carefully read by that judge. Also, assume (and I think it is a safe assumption) that the judge will not be impressed by your repeated accusations of unethical and other untoward conduct by opposing counsel.

Eighth, do not let an uncivil lawyer drag you into the mud. It is so easy to return an obnoxious email with an equally obnoxious email because, well, opposing counsel deserves it. Avoid that trap. When the record ends up before the court, the difference in tone between you and your uncivil adversary will not go unnoticed.

Finally, pretend your mother is present at all of your depositions. Nowhere do counsel behave more poorly than in depositions. The combination of an adversarial situation, stress, and the absence of a judge tends to bring out the worst in lawyers. But it doesn't have to be that way…

In Summary

Let us remember our duty to act civilly, recognize the benefits that come therefrom, and strive to keep ourselves from slipping into the incivility that harms us, our clients and our profession.

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[1] https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Attorney-Civility-and-Professionalism

[2] https://abotaorg.sharefile.com/share/view/s1640a9488216495592bf3cd4145e70db/foaa3e89-b9fe-47dc-a561-0a05eebbea20

[3] https://www.ocbar.org/All-News/News-View/ArticleId/1720/March-2016-Civility-Among-Lawyers-Nice-Guys-Don-t-Have-to-Finish-Last

LiABiLiTY

A Short Primer on Respondeat Superior Liability for Intentional Torts

By: Alla V. Vorobets

Alla Vorobets,
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is a CCTLA
Board Member

DOCTRINE

In California, the employer is normally liable for an injury/damage caused by an employee while in the course and scope of employment. That concept is at the core of the doctrine of respondeat superior. Under the doctrine, liability is imposed on the employer for negligent and/or wrongful acts committed by its employee ***even if*** such acts are "willful, malicious and even criminal." CACI 3722 (Course and Scope; Unauthorized Acts) (even an employee's wrongful or criminal conduct may be within the scope of employment even if it breaks a company rule or does not benefit the employer); CACI 3701 (Tort Liability Against Principal); CACI 3720.

The doctrine is a departure from the general tort principle that liability is based on fault. *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 208). Three policy justifications for the respondeat superior doctrine have been cited—prevention, compensation, and risk allocation. *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291; *Newland v. County of Los Angeles* (2018) 24 Cal. App.5th 676, 685.

It is the plaintiff's burden to prove that the employee's tortious act was committed within the scope of employment. *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202. Conduct is generally deemed to fall within the scope of employment if:

- It is reasonably related to the kinds of tasks that the employee was employed to perform; or
- It is reasonably foreseeable in light of the employer's business or the employee's job responsibilities.

CACI No. 3720.

Unauthorized, Intentional and Off-the-Clock Wrongs

But is the employer still liable if the wrongful acts of the employee were never authorized by the employer; maybe even specifically prohibited by the employee? What if the wrongful acts were done off-the-clock? What is the employer engaged in intentional wrongdoing?

When it comes to intentional torts, to hold an employer liable, Plaintiff must show more connection to the wrongful act than just the wrongdoer's employment.

Specifically, the California Supreme Court explained that in the context of intentional torts, the "nexus required for respondeat superior liability—that the tort be engendered by or arise from the work—is to be distinguished from 'but for' causation." *Lisa M., supra*, 12 Cal.4th at 298. In other words, it is not enough that the employment brought the tortfeasor and victim together; an additional link is required. *Id*.

Tests used to evaluate the additional link include: whether the incident leading to injury was an "outgrowth" of the employment; whether the risk of tortious injury was "inherent in the working environment"; or whether the risk of injury was "typical of or broadly incidental to the enterprise the employer has undertaken." *Id*. at 298; see also, *Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1008. Stated differently, the key issue is whether the employee's acts were foreseeable as it relates to the employee's scope of employment. *Lisa M., supra*, 12 Cal.4th at 299 ("[t]he employment … must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought.")

Vicarious liability for intentional torts may *also* be proper where the tortious conduct results or arises from a dispute over the performance of an employee's duties, even though the conduct is not intended to benefit the employer or to further the employer's interests. E.g., Fields v. Sanders (1947) 29 Cal.2d 834 (employee truck driver beat motorist with wrench during dispute over employee's driving on a company job]; *Carr v. Wm.*

C. Crowell Co. (1946) 28 Cal. 2d 652 (employee of general contractor threw hammer at subcontractor during dispute over construction procedure).

Vicarious liability may even be appropriate for injuries caused after work hours where a dispute arises over the rights and privileges of off-duty employees. *Rodgers v. Kemper Construction Co.* (1975) 50 Cal.App.3d 608 (injuries inflicted by off-duty employees of general contractor during dispute over right to use subcontractor's equipment.)

In these types of situations, the tortious actions were held to have been engendered by events or conditions relating to the employment and therefore are properly allocable to the employer.

Moreover, an employer is liable for employee's wrongful conduct if employer "either authorized the tortious act or subsequently ratified an originally unauthorized tort. [Citations.] The failure to discharge an employee who has committed misconduct may be evidence of ratification." *Baptist v. Robinson* (2006) 143 Cal. App. 4th 151, 169; *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal. App. 4th 1094, 1110-11; Cal. Civ. Code § 2339.

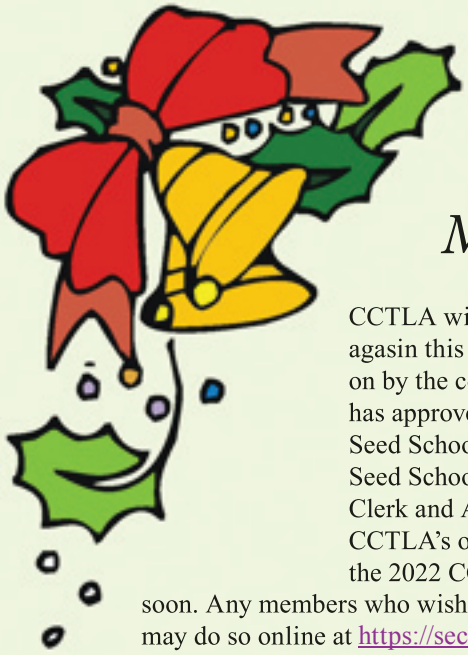
The same standard for vicarious liability apply to sexual assaults. *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal. 4th 291, 300. However, California cases that found employers vicariously liable for sexual assault are rare mostly because the risk of sexual assault is not typical of or broadly incidental to most jobs. See, *M.P. v. City of Sacramento* (2009) 177 Cal.App.4th 121, 131-133.

Conduct That Falls Outside the Scope of the Doctrine

One of the exceptions to the respondeat superior liability rule is made when the employee has substantially deviated from his duties for personal purposes at the time of the tortious act. *Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 968; *Farmers Ins. Grp. v. Cnty. of Santa Clara* (1995) 11 Cal. 4th 992, 1004. Although a minor deviation is foreseeable and will not excuse the employer from liability, a deviation from the employee's duties that is "so material or substantial as to amount to an entire departure" from those duties will take the employee's conduct out of the scope of employment. *Bailey v. Filco, Inc.* (1996) 8 Cal.App.4t 1552, 1556.

Another exception occurs in circumstances where the misconduct does not arise from the conduct of the employer's enterprise but instead arises out of a personal dispute or is the result of a personal compulsion. *E.g., Monty v. Orlandi* (1959) 169 Cal. App.2d 620, 624 (bar owner not vicariously liable where on-duty bartender assaulted Plaintiff in the course of a personal dispute with his common-law wife); see also, *Thorn v. City of Glendale* (1994) 28 Cal. App.4th 1379, 1383 (city not vicariously liable where fire marshal set business premises on fire during an inspection). In such cases, the risks are engendered by events unrelated to the employment, so the mere fact that an employee has an opportunity to abuse facilities or authority necessary to the performance of his or her duties does not render the employer vicariously liable.

Ultimately, whether an employee's actions were within the scope of his employment is a question of fact. *Yamaguchi v Harnsmut* (2003) 106 Cal.App.4th 472.



CCTLA Annual Meeting Canceled, But Fund Drive for Mustard Seed Goes On

CCTLA will not hold its Annual Meeting & Holiday Party agasin this year, due to continued health concerns brought on by the continuing pandemic. However, CCTLAs board has approved making its annual $1,000 donation to Mustard Seed School. This event normally is a benefit for Mustard Seed School and includes the annual awards for Judge, Clerk and Advocate of the Year as well as installation of CCTLA's officers and board. The awards and the slate of the 2022 CCTLA Officers and Board will be announced soon. Any members who wish continue the tradition of donating to the school, may do so online at https://secure.sacloaves.org/np/clients/sacloaves/survey.jsp?surveyId=1& (Campaign: Mustard Seed School) or by mailing your check payable to "Mustard Seed School" to: Mustard Seed School, 1351 North C Street, Sacramento, CA 95811.

New U.S. Supreme Court lien case granted review

By: Daniel E Wilcoxen

Daniel Wilcoxen, of Wilcoxen Callaham, LLP, is a CCTLA Board Member and a CCTLA Past President

The case of *Gianinna Gallardo an incapacitated person by and through her parents... vs. Simone Marstiller, Secretary for the Florida Agency for Health Care Administration* (hereafter Gallardo), was accepted for review by the United States Supreme Court on Friday, July 2, 2021, with regard to the issue of Medicaid reimbursement.

As we all know, various states have various laws about how much money Medicaid (Medi-Cal in California) can recover back from a third-party litigation at-fault party causing injury paid for by Medicaid/Medi-Cal. We also are all aware that these code sections are found in the Welfare & Institutions Code §14124.70, et seq., concerning the rights to recover back funds expended by Medi-Cal (Medicaid) and the limitations on their rights of recovery.

Generally speaking, they have always been found in Welfare & Institutions Code §§ 14124.72, 14124.78, and more recently, since the case of *Arkansas Department of Health v. Ahlborn* (2006) 126 S.Ct. 1752 (*Ahlborn*), in §14124.76. The Supreme Court set forth in *Ahlborn* the factors to determine rights of recovery on a case by case basis as opposed to a fixed formula as found in §§14124.72 and 14124.78.

The *Gallardo* case being accepted for review by the United States Supreme Court as of July 2, 2021, may create a uniform law across the nation in Medicaid cases. The issue presented in the Petition for Writ of Certiorari is "whether the Federal Medicaid Act provides for a state Medicaid program to recover reimbursement for Medicaid's payment of a beneficiary's **past** medical expenses by taking funds from the portion of the beneficiary's tort recovery that compensates for **future** medical expenses."

The case arises from an injury sustained by Gianinna Gallardo in November 2008, when the then 13-year-old student was struck by a truck after her school bus dropped her off. She suffered catastrophic physical and brain injuries and remains today in a persistent vegetative state.

The Florida Medicaid program paid **past** medical expenses of $863,688.77, and the remainder of her medical expenses of $21,499.30 were paid by a private insurer. Florida's Agency for Health Care Administration (hereafter "Florida") has a statutory recovery program wherein the medical expenses are paid from a sum created by first reducing the beneficiary's gross recovery by 25% to account for attorneys' fees, thereafter deducting taxable costs from the gross recovery, and the sum created thereby is thereafter cut in half with Florida recovering 50% after the first two reductions. If these statutory schemes are not followed, apparently an administrative law judge can make a determination as to what the recovery should be.

The result in the *Gallardo* case was that $300,000 was ordered by the administrative law judge to be paid. There was no discussion in the case as to why only $800,000 was achieved, but the school public entity and the truck driver were sued.

It appeared because there was no appeal of the administrative law judge allowed, a case was filed in the Federal District Court which disallowed taking the future meds recovery to pay past meds. Florida appealed to the 11th Circuit Court of Appeal, seeking that Florida's state agencies recover $300,000from the portion of the settlement representing Gallardo's **past** and **future** medical expenses, even though the State of Florida had paid only for Gallardo's past medical expenses.

Prior to the *Gallardo* case, in the case of *Giraldo v. Agency For Health Care Admin.* (FLA 2018) 248 SO 3d 53, the Florida State Supreme Court had ruled, in a unanimous decision, that the state could not use sums awarded for future medical care to pay for past medical expenses.

The 11th Circuit acknowledged that the Florida Supreme Court's ruling was squarely in conflict with their decision. The 11th Circuit allowed the $300,000 pursuant to Florida's formula to be subtracted from the recovery for both **past and future medical care**.

It is obvious from the opinion that since Ms. Gallardo is still in a persistent vegetative state, future meds must have been a large part of the settlement. When considering the Florida Supreme Court's decision in *Giraldo*, the 11th Circuit simply stated the Florida Supreme Court was

"incorrect," thereby allowing Plaintiff's recovery of both past and future medical expenses to be subject to the Florida statutory reduction scheme.

As set forth in *Ahlborn, supra*, as a condition of receiving federal Medicaid funds, a state must agree to administer its Medicaid program in accordance with the requirements of the Medicaid Act 47 U.S.C. §1396, et seq. The *Gallardo* case dealt with the existence of Medicaid requirements.

The general rule that a state is prohibited from imposing a lien on a Medicaid recipient's property to recover the state's payments for medical assistance is set out in the Medicaid Act's anti-lien and anti-recovery provisions 42 U.S.C. §§1396(p)(a)(1), 1396(p)(b)(1). The anti-lien provision states that "no lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the state after plan."

The limited exception to the general rule is that a state may seek reimbursement of its past Medicaid payments to the extent of a third party's legal liability to pay for care and services that were provided by Medicaid.

The state must "seek reimbursement for [medical] assistance to the extent of such legal liability" in "any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual." It is important to note portions stating to the extent payment has been made.

The Petition for Writ of Certiorari further cited *Ahlborn* as limiting the amount recoverable where petitioner *Gallardo* stated: "this court further concluded the anti-lien provision places 'express limits on the state's powers to pursue recovering funds paid on the recipient's behalf.' " Thus, petitioner claimed that under federal law the State of Florida could not assert a lien on the settlement in any amount greater than the portion of the settlement that the recipient and the state had stipulated was the amount representing "reimbursement for medical payments made."

The case of *Wos v. E.M.A.* 568 U.S. 627 (2013) was also cited in the petition. The petition stated that the state in *Wos* had no evidence to substantiate that its irrebuttable presumption, i.e. that 1/3 of any tort recovery by a beneficiary was attributable to medical expenses, wherein the claim of the state was they were merely entitled to one-third of Plaintiff's recovery, no matter what the facts were. *Wos* stood for the proposition that there had to be an analysis similar to *Ahlborn*. and a mere straightforward one-third was not such an analysis.

The *Gallardo* petition argued that, as in *Ahlborn* and *Wos*, the question presented is whether a state statute enacted to satisfy the relevant provisions of the Medicaid Act is consistent with federal law. The relevant statute in Florida allowed the state to recover its past medical payments on behalf of the Medicaid beneficiary from the parts of the tort settlement attributable to both past and future medical expenses.

The 11th Circuit opinion allowed Florida's statutory scheme to collect $300,000 from past and future medical recoveries, despite the Florida Supreme Court's unanimous decision stating that it was inappropriate under the federal Medicaid law. The 11th Circuit's decision was 2 to 1. Judge Wilson dissented, as had the district court in the first test of the statutory scheme in Florida, stating the plain text of the Medicaid Act concluded that the state agency could not pocket funds marked for things it never paid for.

The Petition for Writ of Certiorari by *Gallardo* stated that the (obvious) issues raised are extremely important in that the states have myriad different collection practices for Medicaid benefits recovered from third-party wrongdoers.

It points out that there were many circuit courts of appeal in disagreement, and many state courts in disagreement with each other as to what the states have a right to collect. It was pointed out that under California's statutes, the state may only recover from the portion of the tort recovery "that represents payment for medical expenses or medical care" that already has been "provided on behalf of the beneficiary"—that is, from the portion attributable to past medical expenses citing California Welfare & Institutions Code §14124.76(a).

One would think that the Supreme Court would probably follow its ruling in Ahlborn and be consistent therewith. However, the response to Plaintiff's petition filed by Florida raised some interesting issues including, but not limited, to

the following:

1. They supported the request for review;
2. They admitted that there was a conflict between the 11th Circuit opinion and the Florida Supreme Court opinion, many federal trial courts, appellate courts and fice state supreme courts.

However, of concern was the claim in Florida's response that the *Gallardo* case presents an opportunity for the court to clarify *Ahlborn*. The respondent stated that, in *Ahlborn*, the court considered whether states could recover Medicaid expenses from settlement proceeds meant to compensate the recipient for damages distinct from medical costs (*Ahlborn* 546 US at page 272). The argument was that the issue as to medical expenses, past and future, was never raised in the *Ahlborn* case. Florida argued that in the *Wos* case, 568 U.S. at page 650, Justice Roberts dissented, stating the question in *Ahlborn* "was an easy one" because it is plain that "the state is only entitled to recover medical expenses."

Thus, Florida argued that under the assignment clauses required by the Medicaid Act, **all** rights to pursue third-party wrongdoers are assigned to the state entities supplying needy persons with Medicaid benefits. I believe, potentially, since the *Wos* decision was not unanimous as *Ahlborn* was (with Justices Alito and Thomas joining in as dissenters in *Wos*), and the addition of two more conservative justices that there may be votes to clarify *Ahlborn,* potentially suggesting that all medical expenses (past and future) awarded are available to pay past medical expenses.

We should all keep our fingers crossed on this issue because the possibility of using recoveries of future meds to pay back past meds could be devastating to Plaintiffs' recoveries

We should all keep our fingers crossed on this issue because the possibility of using recoveries of future meds to pay back past meds could be devastating to Plaintiffs' recoveries.

One potential difference between California and other states is that in California, if the recipient of Medicaid benefits under the Medi-Cal program receives a substantial award, they would be precluded from the needs based payment of Medi-Cal benefits, unless they pay off all existing Medi-Cal liens and create a court-approved Special Needs Trust. After a Special Needs Trust is created, and Medicaid benefits are available to the injured party, all of the Medicaid benefits paid are collectable at 100%, with no deduction of any kind, when the beneficiary of the Special Needs Trust dies. There are limited exceptions to this, such as a disabled heir of the beneficiary may be able to get a reduction and/or pay nothing back to Medi-Cal.

In a case such as *Gallardo*, where it is a 13-year-old girl in a persistent vegetative state, the life expectancy of that person is extremely limited, and the funds are being conserved by the continuing use of Medicaid. Thus, there would probably be a large fund available to Medi-Cal to collect. Further one cannot argue under the case law in the State of California that future meds to be paid by Medi-Cal are future damages.

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CCTLA members are invited to share their verdicts and settlements: Submit your article to Jill Telfer, editor of *The Litigator*, jtelfer@telferlaw.com. The next issue of *The Litigator* will be the Spring issue, and all submissions need to be received by January 15, 2022.

VERDICT
$5,000,000

Rosemary Perkins, individually and as the successor-in-interest to the Estate of Paul Perkins, and Maria Consuelo Rosas-Calderon v. Waterworks Industries, Inc., William Borges Jr. and Does 1-30, inclusive

CCTLA members **Kevin L. Elder** and **Garrett M. Penney**, of Penney & Associates, obtained a $5-million verdict in a jury trial for a motor vehicle wrongful death / personal injury case for their client, Rosemary Perkins, who was married to the decedent, Paul Perkins.

On Mar. 1, 2017, Decedent Paul Perkins and, his wife, Plaintiff Rosemary Perkins, both 64 , and their neighbor and friend, Maria Consuelo Rosas-Calderon, 41, were southbound on Terminal Avenue between Riverbank and Modesto at approximately 6:30 p.m. Plaintiffs were in a half-ton 2002 GMC truck at an estimated speed of 55-56 miles per hour. At the same time, Waterworks Industries, Inc.'s employee, William Anthony Borges Jr., was northbound in a 2011 Ford F-350 truck. Defendants admitted Borges was operating a company-owned vehicle within the course and scope of his employment at the time of the incident.

Terminal Avenue is a two-lane road without any adjacent improvements, lights or fog lines identifying the edge of the roadway. The road was painted with yellow skip-stripes identifying the northbound and southbound lanes. The incident happened when the left front of the Waterworks truck struck the left front of the plaintiffs' truck at a closing speed estimated at 125 miles per hour. Data retrieved from the EDR contained within Defendant Waterworks' truck revealed that Defendant Borges' speed at impact was 70 miles per hour. The posted speed limit on the road was 55 miles per hour, and the Plaintiff's truck was estimated to be traveling at 55-56 miles per hour. The data also revealed there were no steering movements to avoid the impact, nor was there any braking during the five seconds before impact.

Paul Perkins, was killed instantly. Defendant Waterworks' employee, William Anthony Borges, Jr., sustained a scratch to his finger, while Plaintiff Rosemary Perkins, in addition to losing her husband, suffered a broken jaw and a fracture of her left tibial plateau. Right rear passenger Maria Ross-Calderon suffered a fractured sternum.

Defendants contested liability, arguing that Plaintiff's Decedent, Paul Perkins, contributed to the cause of the incident by traveling either on or over the skip-striped middle line of the roadway. Plaintiffs argued that Defendants' vehicle crossed over the centerline and into the southbound lane, causing the incident.

Plaintiffs' expert, Jeffrey Bonsall, with Momentum Engineering, testified that based on gouge marks in the roadway, the physical evidence to both vehicles and data from Defendants' truck's EDR, the impact occurred as much as three feet into Plaintiffs' southbound lane.

In sharp contrast, Defendants' expert, Rajeev Kelkar, PhD, testified that the impact occurred either on the centerline or as much as 20 inches inside the southbound lane. Both experts agreed that the impact occurred in the southbound lane. Defendants, through their experts, contended that Plaintiffs created a condition of imminent peril which excused Defendants' conduct.

An independent witness who was traveling behind the Perkins' vehicle testified that the Perkins' vehicle was traveling southbound and either crossed the centerline into the northbound lane or was near the centerline during the moments before impact. Based upon this testimony, Defendants' expert Kelkar testified that Defendant Borges was presented with a condition of imminent peril which caused Borges to move his vehicle to the east side of the road, causing him to leave the roadway surface. When he attempted to get back onto the roadway surface, he temporarily lost control of his vehicle, causing him to cross into the southbound lane.

It took the jury two hours and 20 minutes to return the verdict for the plaintiffs.

Breakdown of the award: $1 million past and future economic damages for wrongful death of husband; $3.5-million non-economic damages for loss of husband; $100,000 for past medical expenses; $400,000 for past personal injury, physical pain and suffering.

In addition to the loss of her husband, Plaintiff Rosemary Perkins suffered a broken jaw that was wired shut for 60 days, along with a tibial plateau fracture, both of which resolved within 12 months. Plaintiff Maria Consuelo Rosas-Calderon settled her case for the total sum of $75,000 with medical specials of less than $1,500 paid by Medi-Cal.

SUMMARY JUDGMENT
$1,511,068.44

Kathryn Cain, personal representative of the Estate of William H. Leslie Sr., Plaintiffs, v. J. B. Hunt Transport, Inc., doing business in California; . B. Hunt Logistics, Inc; Narinder S. Mahal

CCTLA Board Member John Stralen and **CCTLA member Gina Bowden**, both of The Arnold Law Firm, recently obtained final judgment after the San Joaquin County Superior Court granted Plaintiff's Motion for Summary Judgment on her breach-of-contract action, which arose out of the Defendant's failure to pay settlement funds.

Underlying Personal Injury Case

The case stems from a May 9, 2016, multi-vehicle collision on Highway 4 in Stockton when a loaded big rig rear-ended William Leslie's car, causing a chain-reaction collision between

Leslie's pickup and two other vehicles. At the time, Leslie was a 73-year-old retired lumber mill worker.

As a result, Leslie suffered vertebral fractures, requiring a two-level fusion surgery and post-surgery physical therapy. Medicare paid approximately $105,000 for his medical care related to his injuries. Since he was retired, no wage-loss claim was made.

Parties Settle Leslie's Personal Injury Case

In August 2017, defense counsel sent a written settlement offer, which expressly conditioned settlement upon "a complete release (including a confidentiality provision) and dismissal of the case with each party to bear their own fees and costs." Thereafter, on Nov. 1, 2017, the parties attended mediation, at which Plaintiff's counsel made a counter demand.

On Nov. 10, 2017, Defendants' insurer's claims specialist called Leslie's counsel directly and left a voicemail message in which he discussed Leslie's most recent demand to settle the case and stated, "I'm the money guy, calling you directly," "you can call me directly," and "you don't need to go through my defense counsel." He further stated, "Deal with me directly on negotiations, and we can take out the middleman."

As trial approached, Leslie's health declined due to issues unrelated to his injuries, and he provided authority to settle his case for $1,100,000. Following Leslie's grant of authority to settle, Plaintiff's counsel spoke to Defendants' insurer's claim specialist three times, on Dec. 19, 2017. During the third call, a verbal settlement of the case was reached where Defendants (and their insurer) would pay $1,150,000 to settle the case in exchange for a release and dismissal. During the call, the claims specialist deferred to defense counsel regarding to whom the check would be addressed.

The next day, on Dec. 20, 2017, defense counsel called Plaintiff's counsel to express his understanding that settlement had been reached, and the parties discussed to whom the check would be made payable. A written memorialization of the settlement (a release) would be sent by defense counsel for Leslie to sign. Shortly thereafter, on Dec. 20, 2017, an Arnold Law Firm staff member emailed defense counsel a W-9. Plaintiff's counsel called Leslie and informed him that the case had settled and sent an email to law firm staff stating the case was settled and to stop any pending vendor orders.

Early in the morning, on Dec. 21, 2017, Leslie's attorney sent an email to defense counsel (and cc'd counsel for the other parties in the consolidated cases), providing notification of the settlement between Leslie and Defendants.

Leslie Dies, and Defendants Refuse to Honor the Oral Settlement

Unfortunately, Leslie died on Dec. 21, 2017, without having had an opportunity to sign the written memorialization of the settlement. Upon learning of his death, Defendants refused to honor the settlement agreement, claiming that Leslie's personal injury case was now, at best, limited to the $105,000 in medical expenses that were paid by Medicare because pre-death pain and suffering damages were no longer recoverable.

A probate was opened, and the court appointed private fiduciary Kathryn Cain as personal representative of the estate of William Leslie. The probate court granted Cain special powers to sign and maintain representation with The Arnold Law Firm and to proceed with finalizing the settlement or pursuing additional litigation, if necessary.

The Estate of William Leslie Files Suit and Prevails on Summary Judgment

Meanwhile, Defendants continued to refuse to honor the settlement. In May 2018, The Arnold Law Firm filed a breach-of-contract lawsuit against Defendants on behalf of the Estate of William Leslie. The Hon. Robert Hight (Ret.) was appointed as special master to govern discovery proceedings. The Arnold Law Firm brought in associate counsel, Hansen, Kohls, Sommer & Jacob, LLP, to assist in the prosecution of the breach-of-contract case.

Following depositions of Plaintiff's counsel, defense counsel and the claims specialist, Plaintiff filed a motion for summary judgment seeking an order that, as a matter of law, the undisputed facts prove that Defendants breached the parties' verbal settlement agreement. Defendants also filed a motion for summary judgment, in an attempt to dispose of the breach-of-contract action.

The court ruled on the motions for summary judgment in June 2021. It denied Defendants' motion and agreed with Plaintiff that the undisputed facts proved that an oral settlement agreement had been reached in the amount of $1,150,000. It further ruled that Defendants breached that agreement by failing to perform.

The court later granted Plaintiff's motion for pre-judgment interest in the amount of $361,068.44 and added that amount to the $1,150,000 for breach-of-contract damages. In August 2021, final judgment was entered for a total amount of 1,511,068.44.

VERDICT
$800,000 plus attorneys' fees

Glenda Rodger v. Los Angeles County, Case No. BC697083

Past CCTLA President Lawrance A. Bohm, Bohm Law Group, Inc., lead trial counsel; **Robert L. Boucher**, Bourcher Law, trial counsel; and **Brandon Ortiz**, Ortiz Law, prevailed in a suit brought by a whistleblower wrongfully terminated after reporting time fraud at the Los Angeles County Public Library.

The trial was held in Los Angeles County Superior Court, with the Hon. Dennis J. Lanin, presiding, in 2019. The verdict was $800,000 in economic damages, plus approximately $1,000,000 or more in attorney fees and costs.

Plaintiff Glenda Rodger had worked at the Lancaster Public Library, the largest library in the County of Los Angeles' library system, since 1986 and had been promoted several times, most recently, in 2004 to Library Assistant III, Supervisor of the Ciruculation Desk.

In 2016, Plaintiff noted that certain co-workers were missing from their assigned work stations. She reported to her

supervisor, Community Library Manager Valerie Bailey, that these co-workers were seen "out on the boulevard" during work hours, had been observed playing Pokémon Go when they were supposed to be manning the Passport Office, were shopping on Amazon for personal items and were reading news when they should have been working. These subordinates had been observed acting inappropriately during an all-staff meeting at Pasadena City College.

To protect the library and the taxpayers from fraud caused by employees not working when clocked in, Rodger reported these offenses to Bailey, her supervisor. Rodger stated she did so also to protect Bailey, who was in charge at Lancaster.

However, Bailey admitted she was friends with the offending employees, and the employees admitted being friends with Bailey. Rather than addressing Plaintiff Rodger's complaints about time and abuse fraud, Bailey violated county policy and told the co-workers that Rodger had reported she "knew" the co-workers's were were having an affair. Rodger vehemently denied reporting or even concerning herself with whether co-workers were romantically involved.

The co-workers became upset at Rodger, and thereafter, her office was ransacked, and a cherished gift from a then-retired co-worker was found broken on the floor after it had sat on the same shelf for years. Rodger's Rolodex was shuffled, a filing cabinet with confidential materials which Rodger always kept locked was left wide open, and later, a co-worker observed one of the offending employees slamming Rodger's office door.

Rodger reported this bullying behavior as a hostile work environment to the LA County Human Resources Department.

Shortly after Bailey revealed Rodger's alleged disclosures about the co-workers to them, one of the them filed a complaint against Rodger for spreading harassing rumors. County Human Resources Investigator Stacy Simpson in turn called Plaintiff Rodger to tell her that she had been reported to Human Resources for "harassment," but she refused to explain the charges against Rodger.

Plaintiff filed a County Policy on Equity (CPOE) complaint, alleging a hostile work environment, time abuse and retaliation. Her CPOE complaint cited the office ransacking, the failure to address her time fraud allegations and the "false charges" against her (the unsupported allegation of harassment). Thereafter, Rodger took a two-month leave of absence due to work stress. During that leave, the county failed to address any of Rodger's concerns and failed to investigate the co-worker's false charge against her.

When Plaintiff returned from leave, Rodger found a workplace turned against her, and in her absence, Bailey had changed office policy with respect to Rodger's supervisory responsibility for part-time subordinates. The subordinates were understandably upset that Rodger questioned them about the changes and whether they had agreed with them. Thereafter, Rodger was falsely accused as the aggressor who was creating a toxic work environment for her subordinates.

Plaintiff spent an uncomfortable month trying to navigate this now-abusively charged work environment. In December 2016, she learned that the county planned to transfer her to the Lake Los Angeles Public Library in Palmdale, CA, nearly twice as far as Lancaster from her home in Mojave.

Under oath, Simpson, the county's own Human Resources investigator, admitted that the county's decision to transfer Rodger was "because [Rodger] was reporting a hostile work environment" and that the "hostile work environment was motivated by retaliation." Simpson admitted the transfer was illegal and that county was not following the law or it's policy.

At almost the same time, one of Rodger's co-workers reported to her that people in the Lancaster library "wished she was dead." Rodger reported the death threat, but the county did not investigate. Because of the death threat and the unreasonably long commute away from her ill husband in the isolated desert, Rodger elected to retire. Subsequent to her retirement, she began working at the Lancaster School District, where she is currently employed as an elementary school librarian.

At trial, Plaintiff alleged she was transfered for reporting time abuse by her co-workers and subordinates. The county maintained that it transfered Rodger because of gossip-mongering, that the transfer was "temporary" and that her complaints were themselves retaliation.

Rodger demonstrated she initially had reported time abuse to Bailey, her superior, and that Bailey falsely reported that Rodger's time-abuse complaints were actually gossip about co-workers' affair. She demonstrated that thereafter, her co-workers began subjected Plaintiff to a hostile work environment, ostracizing her from the library she'd loved for 31 years. Rodger showed by a preponderance of the evidence that her complaints were a substantial motivating reason for the county's decision to transfer her to the Lake Los Angeles Public Library, 53 miles from her desert home.

Plaintiff said she lost $800,000 in wages and benefits through the end of her work-life expectancy and suffered from physical pain, anger, fright, loss of enjoyment of life, anxiety, humiliation and emotional distress due to the treatment she received at the Lancaster Public Library.

Plaintiff's experts were Charles R. Mahla, Ph.D., specializing in economics, Sacramento; and Anthony Reading, Psy.D., specializing in psychology, Beverly Hills.

VERDICT
$732,560

Chase v. Lodi Unified School District and Nichols-Washer

On Sept. 8, 2021, **Noemi Nuñez Esparza, Esq.**, a CCTLA board member, and **Natalie M. Dreyer**, a CCTLA member, won a jury verdict in favor of a 26-year-old single mother of a six-year-old girl, who both were involved in a motor vehicle collision on Feb. 4, 2016, at approximately 8:20 a.m. in Lockeford, CA. The case was venued in San Joaquin County. Trial judge was Barbara Kronlund. Defendants did not admit liability until the Friday before trial began.

The parties were traveling on streets perpendicular to each

other. Defendant driver had a stop sign, while Plaintiff had no traffic controls. Defendant driver claimed she stopped before proceeding to cross the intersection. Defendant driver was driving in the course and scope of her employment with the Lodi Unified School District at the time of the collision.

As a result of the collision, Plaintiff was diagnosed with a neck injury and right shoulder injury. Plaintiff underwent more than 200 physical therapy visits for both her neck and right shoulder during the intervening five years. She also underwent ESI injections to her cervical spine. Plaintiff ultimately underwent two right shoulder arthroscopic procedures, on Oct. 5, 2017, and Mar. 11, 2020, and a C5-6 anterior cervical discectomy on Jun. 12, 2020, some four years after the collision.

One month after the subject 2016 collision and before her first shoulder MRI of April 2016, Plaintiff reported to her physical therapist that she had aggravated her shoulders trying to pull her body over a three-foot fence after being chased by dogs. Plaintiff was also involved in two subsequent motor vehicle collisions: in March 2016, a month after the subject collision, and in January 2017, for which she went to the ER for fetal monitoring because she was pregnant with her second child, but she reported no other symptoms. Property damage sustained in the 2017 collision was the same as that of the subject 2016 collision, left front-end moderate damage.

Although Plaintiff's first orthopedic surgeon suspected a rotator cuff tear based on the initial Apr. 14, 2016 MRI, he reported in his operative report that he did not see the tear during the arthroscopic procedure on Oct. 5, 2017. Plaintiff continued to have ongoing pain and symptoms after the initial arthroscopic procedure and sought a second opinion three years later, on Apr. 5, 2019, with another orthopedic surgeon who suspected a rotator cuff tear. During the second arthroscopic procedure performed on Mar. 11, 2020, this different orthopedic surgeon saw and repaired a tear he suspected had been there since the first collision.

Plaintiff did not undergo a cervical spine MRI until April 2018 due to Medi-Cal denials. It was not until July 2019 that Plaintiff underwent evaluation of her neck pain and symptoms with a pain management specialist who ultimately referred her to an orthopedic surgeon who recommended the cervical discectomy. While Plaintiff had been undergoing physical therapy before her cervical discectomy, she had a sizable gap in treatment during her pregnancy.

Defendants retained Laurence Neuman, PE, to do a reconstruction of the collision who opined that the Defendant driver ran the stop sign. He also provided the Delta-V for their retained biomechanist, Richard Robertson, PhD, who opined that Plaintiff could not have suffered a rotator cuff injury in the subject 2016 collision. Plaintiff argued he lacked foundation for his testimony; however, he was allowed to testify by the trial judge after a 402 hearing.

Defendants also retained orthopedic surgeon Edward Cahill, MD, to opine on shoulder causation. Despite the biomechanist's opinion, Cahill, in his first deposition in 2019, opined that the shoulder injury was related, though he opined that surgery was not necessary. Sometime thereafter, he was given the physical therapy records that mentioned the jumping-over-the-fence incident, and Cahill changed his opinion, and in his second deposition, taken in May 2021, he related Plaintiff's shoulder injury entirely to jumping over the fence.

Defendants also retained orthopedic spine surgeon, Gary Alegre, MD, who opined that Plaintiff's neck injury and need for a cervical discectomy were not related to the subject 2016 collision and likely had been caused by a variety of other events, such as the subsequent collisions and/or her active lifestyle. Defendants also hired Agnes Grogan as their billing expert who was allowed to testify about Medi-Cal amounts, over Plaintiff's objections.

Medical Specials totaled $212,891. Plaintiff's neck and second shoulder surgery were done on a lien basis. After it was recommended that Plaintiff have surgery for her neck and a second shoulder surgery but before either surgery was performed, Defendants made a CCP 998 offer to settle in the amount of $175,000. Shortly before trial, Defendants offered $600,000 to settle the matter. Plaintiff's daughter's case settled before trial for $26,000.

Trial lasted 10 days. The jury awarded $185,000 in past medical expenses (9-3); $7,560 in household services (9-3); $140,000 in future medical expenses (9-3); $200,000 (11-1) in past non-economic damages; and $200,000 in future non-economic damages (10-2), for a total of $732,560.

CLASS SETTLEMENT
$3,500,000

Adam J. Harmoning, Araz Parseghian and Darlene Dravis, individually, and on behalf of those similarly situated; Plaintiffs vs. Homestreet Bank, a Washington corporation, Defendant

CCTLA Board Member John Stralen, Arnold Law Firm, and **CCTLA member Darren Guez**, of the Law Offices of Darren Guez, and Douglas Han and Shunt Tatavos-Gharajeh from the Justice Law Corporation, together acting as co-lead counsel, obtained final court approval of a $3,500,000 settlement on behalf of a class of current and former mortgage officers employed by Homestreet Bank.

Plaintiffs alleged overtime violations and failure to reimburse business-related expenses on behalf of a putative California class of current and former Homestreet Bank mortgage officers who were classified as exempt outside sales representatives. Plaintiffs also sought "PAGA" penalties under the Private Attorneys General Act.

Plaintiffs' allegations included claims that the class of employees was designated as exempt outside sales representatives whose job descriptions required them to spend more than 50% of their work hours outside of the office, as a required to maintain their exempt status. However, despite this requirement, Homestreet Bank had paid little or no money to class members for expense reimbursement.

This case involved three separate lawsuits. One was filed by

Member Verdicts & Settlements

attorneys Stralen and Guez on behalf of Plaintiff Adam Harmoning in Sacramento County Superior Court. The other two were filed by attorneys from the Justice Law Corporation, one in Los Angeles County Superior Court and the other in Alameda County Superior Court. After the cases were resolved at mediation, they were consolidated with the Harmoning action filed in Sacramento where final approval of the settlement was obtained.

TWO SETTLEMENTS
$3,100,000 and $750,000

CCTLA member Mark R. Swartz recently obtained two significant settlements.

One was a $3.1-million settlement for a client who twisted her ankle while descending a stairway in a shopping center parking lot.

Client was walking down an exterior concrete stairway in the parking lot of a shopping complex in Citrus Heights when she rolled her left ankle while walking down the stairs. The adjacent light standard was not working, the steps varied in height, and there were loose rocks as part of the landscaping on either side of the stairway. Due to the darkness and uneven stairs, she misjudged a step, and she may have stepped on a loose rock.

After undergoing three surgeries to repair the injured tendons in her ankle, she was still experiencing chronic pain and had to use a cane to walk. She chose to have her left foot amputated and was pleased that she did. Her medical bills totaled $131,075.51. There was no income loss since she was already disabled from work due to a prior neck injury.

Swartz also obtained a $750,000 settlement for a client who fell while walking down a hallway in the grocery store where she worked. Client had just clocked in and was walking from the break room to the sales area of the store with two co workers when she slipped and fell onto her right side.

She and her coworkers testified that the floor was unusually slippery and appeared to have just been mopped, but no warning signs had been placed in the hallway by the maintenance worker from the janitorial company, an outside contractor.

Client underwent surgery to repair a torn meniscus in her right knee, and two years later, she had her right SI joint fused. Her medical bills totaled $129,074.92, her past income loss totaled $131,836, and her future income loss was estimated to be $191,179.

When A Signed Release Goes Too Far

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CCTLA COMPREHENSIVE MENTORING PROGRAM — The CCTLA Board has developed a program to assist new attorneys with their cases. For more information or if you have a question with regard to one of your cases, contact: Dan Glass at dsglawyer@gmail.com, Rob Piering at rob@pieringlawfirm.com, Glenn Guenard at gguenard@gblegal.com, Chris Whelan at Chris@WhelanLawOffices.com or Alla Vorobets at allavorobets00@gmail.com

TUESDAY, DEC. 14, 2021

Q & A Problem-Solving Lunch

Noon, via Zoom

CCTLA Members Only

CCTLA Calendar of Events